

IN THE UNITED DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

DAVID BIEBEL,
Plaintiff

ERIE DIVISION
CIVIL ACTION NO. 05-10

vs

KOHL'S DEPARTMENT STORE,
Defendant

ORIGINAL

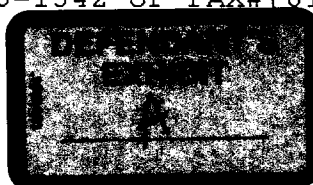
Deposition of DAVID BIEBEL, taken before and
by Ann Marie Sullivan, Certified Court Reporter and
Notary Public in and for the Commonwealth of
Pennsylvania, on Thursday, June 16, 2005, commencing
at 10:30 a.m., at the law office of Kevin W. Barron,
Esquire, 821 State Street, Erie, Pennsylvania 16501.

APPEARANCES:

CYNTHIA L. O'DONNELL, ESQUIRE, Tighe, Evan, Schenck &
Paras, Four Gateway Center, 444 Liberty Avenue, Suite
1300, Pittsburgh, Pennsylvania 15222. Attorney for
Defendant, Kohl's Department Store.

KEVIN W. BARRON, ESQUIRE, Law Offices, 821 State
Street, Erie, Pennsylvania 16501. Attorney for
Plaintiff, Davie Biebel.

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1 Q. Did you choose not to get a shopping cart when
2 you entered Kohl's that day?

3 A. Yes, because I didn't know what I was going to
4 get.

5 Q. Can you tell me how you were feeling that day
6 with respect to your left knee?

7 A. My left knee was feeling good.

8 Q. Were you having any pain that morning?

9 A. No.

10 Q. What about your neck or back, any pain that
11 morning?

12 A. I have pain all of the time.

13 Q. Were you having any difficult walking about the
14 store?

15 A. No.

16 Q. Were you wearing a brace, a knee brace or
17 anything like that?

18 A. No.

19 Q. Do you remember what department you fell in?

20 A. It was the men's department.

21 Q. Do you remember where you were walking from and
22 where you were on your way to when you fell?

23 A. I had just picked a shirt up and a pair of
24 pants, package of socks, put them in my left arm, walked
25 around the corner of one aisle straight down the aisle

1 looking for the shoe department and that's when I stepped on
2 the veranic (phonetic) device.

3 Q. Now you mentioned you turned around a corner and
4 started walking down an aisle?

5 A. Right. I walked down the aisle.

6 Q. Do you recall how many feet you walked in that
7 aisle where you fell before you fell?

8 A. Approximately, 10 feet.

9 Q. Now you referred to falling on a veranic device.
10 Are you referring to a metal shoe --

11 A. Yes, a metal shoe device.

12 Q. You use to measure your shoe size?

13 A. Yes, length and width. Has to be used by two
14 people.

15 Q. Did you see the shoe sizer before you fell?

16 A. No I didn't. I was looking for the shoe
17 department.

18 Q. Where exactly were you looking before you fell?
19 Were you looking straight ahead or --?

20 A. No. I was looking towards my left where the
21 shoe department was. I was trying to figure out how many
22 more aisles I had to go to get to the shoe department.

23 Q. Now after you turned into the aisle where you
24 fell you said you walked about 10 feet before you fell.

25 After you turned down that aisle, at any time did you look

1 down to the floor before you fell?

2 A. Yeah, I had to, because part of it was carpeted
3 and part wasn't so I looked down a little bit to make sure I
4 was in an aisle.

5 Q. As you turned, did you look at the floor in that
6 aisle?

7 A. Briefly, but I was basically looking towards the
8 shoe department.

9 Q. And when you looked at the floor did you see the
10 show sizer?

11 A. No, I wasn't into the aisle yet.

12 Q. Where were you?

13 A. I was just turning the corner into the aisle.

14 Q. Were you making a left or right?

15 A. I was making a right.

16 Q. As you turned to the right?

17 A. That's when I was looking to the left.

18 Q. You started to look to your left?

19 A. Right.

20 Q. You didn't, after you turned right down the
21 aisle, you didn't look to the floor?

22 A. No.

23 Q. Were you trying to look up over the merchandise
24 or were you looking at merchandise?

25 A. No. There was shelving that was there. I was

1 trying to look over there. Being my height, I'm 6'4", I
2 could see a lot but I wanted to see which aisle, where I had
3 to go.

4 Q. Could you see up over the shelving?

5 A. Yeah.

6 Q. Do you remember what was on the shelving,
7 whether it was shoes or some other product?

8 A. There were some shoes on the shelving on the
9 other side of the aisle where I was walking.

10 Q. Was there anyone in the aisle where you fell?

11 A. No.

12 Q. Did you see any employees in the area before you
13 fell?

14 A. No.

15 Q. Did you see any customers around where you fell?

16 A. No.

17 Q. When you walked down the aisle during that 10
18 feet where you walked before you fell, were you in the
19 center of the aisle or off to one side or the other?

20 A. Center.

21 Q. Can you tell me exactly what happened when you
22 fell, how this happened?

23 A. I was walking down, as I was saying, carrying
24 the clothes in my left arm using the cane in my right
25 looking for the shoe department. And I stepped on the

1 measuring device and put all of my weight on my right knee
2 and tried to hold myself up with the cane and I couldn't do
3 it. I looked down and I saw the measuring device as I was
4 going down. My left knee gave out completely and I fell
5 flat down and hit my head and back.

6 Q. What foot did you step on the measuring device
7 with?

8 A. My left.

9 Q. And were you carrying your cane in your right
10 hand?

11 A. Yes.

12 Q. And then when you fell, did you fall straight
13 down, forward, backwards or to the side?

14 A. Forward.

15 Q. And how is it that you injured your right knee
16 in this case?

17 A. I tried to hold myself up and I heard it tear,
18 snap, right away. And then I hit the floor on my right
19 knee.

20 Q. When you fell forward your right knee hit the
21 floor?

22 A. Yes. Also I felt something in my left knee.

23 Q. Now you mentioned earlier you stepped onto the
24 measuring device with you left foot and that's when you
25 looked down and you saw --

1 A. As I was going down.

2 Q. As you were going down, that there was a
3 measuring device there. Was it out in the middle of the
4 aisleway?

5 A. Directly in the middle.

6 Q. Out in the open?

7 A. Out in the open.

8 Q. Okay. I've put in front of you three
9 photographs. Have you had a chance to review those?

10 A. Yeah.

11 Q. Do those photographs depict the aisleway where
12 you fell at Kohl's?

13 A. Totally incorrect.

14 Q. What's incorrect about it?

15 A. There's no shoes on there. This is the wall
16 (indicating).

17 MR. BARRON: Before we go any farther for
18 purposes of the deposition, can we mark
19 these.

20 MS. O'CONNELL: Sure.

21

22 (Biebel Deposition Nos. 1, 2 & 3
23 marked for identification)
24

25 MR. BARRON: Why don't you start again.

1 wood.

2 MR. BARRON: For purposes of the record, Mr.
3 Biebel is referring to Deposition Exhibit No.
4 1.

5
6 A. No merchandise on the entire left side.

7 Q. So on your left was what's in Exhibit No. 1,
8 except the fixture was reversed, it was all wood?

9 A. Flat.

10 Q. And then do you remember what was straight ahead
11 head of you as you were walking?

12 A. No.

13 Q. Could you see the shoes from where you were?

14 A. I could see where the area was.

15 Q. Now in those photographs that are No. 1, 2 & 3,
16 do you see the measurer device?

17 A. Yes.

18 Q. Is that the type of measuring device that you
19 stepped on?

20 A. That's it.

21 Q. But you believe it was in a different aisle?

22 A. I know it was, yes.

23 Q. After you fell did anyone come to your
24 assistance?

25 A. When I yelled for help.

1 Q. Who came to you?

2 A. There was a lady I remember. She was an
3 employee dressed in pink. That's the only thing I remember
4 about her. She came and, also -- well, when she came she
5 picked up -- or another person came and she said she was a
6 nurse. I think she was a customer but she said she was a
7 nurse. She kept me down so I didn't move. And the lady
8 that was in pink picked up the veranic device and put it on
9 the table.

10 Q. Do you know which employee that was by name?

11 A. No, I don't know anyone.

12 Q. She had a Kohl's employee uniform on?

13 A. Yes.

14 Q. And she put the measurer on a table?

15 A. She told the nurse that, she said, he stepped on
16 this.

17 Q. Did you get the name of the nurse by chance?

18 A. No.

19 Q. And then did anyone else come to your
20 assistance?

21 A. Yes, there was a gentleman, I believe he was the
22 assistant manager.

23 Q. And I assume you told them what happened?

24 A. He was asking me questions. I told him that I
25 stepped on it, yeah.

1 Q. Did they call an ambulance for you?

2 A. Yes.

3 Q. Did the ambulance come to your assistance?

4 A. Yes.

5 Q. And then they took you off to the hospital?

6 A. They took me to the hospital.

7 Q. Before the ambulance came, did you stay in the
8 area where you fell?

9 A. Yes.

10 Q. Which hospital did you go to?

11 A. I went to Hamot.

12 Q. Did the employee that came to your assistance or
13 the manager make any statement to you about the shoe sizer?

14 A. No.

15 MR. BARRON: Other than what he already
16 indicated.

17 MS. O'CONNELL: I don't think he indicated
18 anything.

19 MR. BARRON: Sure he did.

20 MS. O'CONNELL: He said she set it up on the
21 table.

22 MR. BARRON: No, he said that she said, he
23 stepped on this. And she indicated that to
24 the nurse.

25 MR. O'CONNELL: Oh, I'm sorry.

1 BY MS. O'CONNELL:

2 Q. Was there anything else said?

3 A. No, nothing else, no.

4 Q. In your opinion, was the store busy that day,
5 were there a lot of people?

6 A. No.

7 Q. Do you know how long the shoes sizer had been on
8 the floor before your accident?

9 A. No.

10 Q. And can you tell me what exact injuries you feel
11 you sustained from that accident?

12 A. The injury, back injury and my neck.

13 Q. Did you have the back and neck pain at the scene
14 of the accident or did it come along later?

15 A. As soon as I hit the floor my head hit the floor
16 also. And when the nurse came over to hold me down, I was
17 going to move, I was trying to move, and she told me not to
18 move. But, yes, my back and neck were hurting, yeah.

19 Q. Did you stay overnight at the hospital?

20 A. No.

21 Q. Did they give you any pain medicine?

22 A. No.

23 Q. What did they do for you at the hospital?

24 A. They took X rays.

25 Q. Did they give you a brace or immobilizer?